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FILED
YOLO SUPERIOR COURT

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By

C. Garrett
Deputy

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF YOLO
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10 THE PEOPLE OF THE STATE OF
11 CALIFORNIA,

12 Plaintiff,

13 vs.

14 Marco Antonio Topete,

15
16 Defendant(s)

Dept. 6 Case No. 08-3355

People's Opposition to
Defendant's Noticed Motion for
Pretrial Discovery Compliance

Date: November 25, 2009

Time: 8:30 a.m.

Dept: 6

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18 To the Honorable Judge Paul K Richardson, the defendant,
19 and Counsel for the defendant, Mr. Hayes H. Gable III and
20 Thomas A. Purtell:

21 Please take note that at the above time and place the
22 People will move the court to deny the defendant's motion.

23 **Defense Requested Item # 1**

24 The People object to this requested item, and feel it is
25 outside of our statutory and constitutional discovery
26 obligations. The People are unaware of any authority for this
27 request. The People object to this request on vagueness
28 grounds, and are unaware of how anyone would or should interpret

1 the phrase "substantive information". The people are unaware of
2 any authority for this request, which basically requests that
3 the prosecution turn over every single document that every
4 agency involved in this case has on the case.

5 The prosecution is not required to canvass police agencies
6 for possible discovery for the defendant. As stated by the
7 California Supreme Court: "[A]ll court-ordered discovery is
8 governed exclusively by-and is barred except as provided by-the
9 discovery chapter newly enacted by Proposition 115. (§§ 1054,
10 subd. (e), 1054.5, subd. (a).)" (*In re Littlefield* (1993) 5
11 Cal.4th 122, 129.)

12 The prosecutor's obligation extends under statute only to
13 information "in the possession of the prosecuting attorney or if
14 the prosecuting attorney knows it to be in the possession of the
15 investigating agencies." "[T]he prosecution has no *general duty*
16 to seek out, obtain, and disclose all evidence that might be
17 beneficial to the defense. (*See In re Koehne* (1960) 54 Cal.2d
18 757, 759 ["the law does not impose upon law enforcement agencies
19 the requirement that they take the initiative, or even any
20 affirmative action, in procuring the evidence deemed necessary
21 to the defense of an accused"]; *People v. Hogan* (1982) 31 Cal.3d
22 815, 851 [There is no general duty on the part of the police or
23 the prosecution to obtain evidence, conduct any tests, or
24 "'gather up everything which might eventually prove useful to
25 the defense.'"].)" (*Littlefield, supra*, 5 Cal.4th at 135.)

1 This limitation is supported by the reasoning of cases
2 which have addressed this issue before the adoption of
3 Proposition 115:

4
5 From an examination of the record of the
6 hearing on the motion, it appears that the
7 prosecution did not have such information;
8 however, the defense in essence argued that
9 it would be easier for the prosecution to
10 obtain it and transfer it to the defense.
11 Thus, had defendant's motion been granted,
12 compliance would have required the
13 prosecution to prepare the case for the
14 defense. This is an obligation not imposed
15 by the law.

16
17 (*People v. Gurtenstein* (1977) 69 Cal.App.3d 441, 449; see also
18 *People v. Cohen* (1970) 12 Cal.App.3d 298, 323.)

19 The prosecutor has no duty to actively investigate the
20 facts and circumstances of the case for the benefit of the
21 accused. (*People v. Beagle* (1972) 6 Cal.3d 441, 450 451; *People*
22 *v. Gurtenstein, supra*, 69 Cal.App.3d at p. 449.) Nor are the
23 People required to make a complete and detailed accounting to
24 the defense of all police investigative work on a case. (*Moore*
25 *v. Illinois* (1972) 408 U.S. 786, 795; *People v. Nation* (1980) 26
26 Cal.3d 169, 175.)

27 Defendant cites the case of *People v. Riser* (1956) 47
28 Cal.2d 566, 585, for this and nearly every other discovery
request herein. Defendant misconstrues *Riser*. *Riser* held that
although actual statements made by a prosecution witness should
have been disclosed to a defendant, the failure to do so was
harmless error. (*Id.* at 589.) Defendant, however, gloms onto

1 part of one sentence of the *Riser* court's analysis and then
2 describes it as that court's "holding": "Absent some
3 governmental requirement that information be kept confidential
4 for the purposes of effective law enforcement, the state has no
5 interest in denying the accused access to all evidence that can
6 throw light on issues in the case...." (*Id.* at 586.)

7 Clearly, the above does not purport to state a new
8 discovery rule (*i.e.*, discover everything that may "throw light
9 on issues") that would supplant the actual discovery rules set
10 forth by *Brady* and Penal Code 1054, *et seq.* Nor has the above
11 ever been recognized by any Court as making such a new discovery
12 rule. Further, even *Riser* recognized that discovery of
13 documents cannot be compelled just because of the possibility of
14 their containing relevant material: "There must be more than a
15 mere possibility that the statements when produced will contain
16 contradictory matter and be in such a form that they can be used
17 to impeach, but the chance that it may turn out eventually that
18 they cannot be used for this purpose should not block production
19 at the threshold." (*Id.* at 587.)

20 **Defense Requested Item #2**

21 The People object to this request as outside our discovery
22 obligations, and on vagueness grounds. It would be impossible
23 for us to know the names and addresses "of all persons who claim
24 to be witnesses to any transaction or event constituting part
25 of..." as requested. If the prosecution even attempted to embark
26 on an adventure to determine this answer, we would probably have
27 to violate the gag order in this case.

1 Here again, defendant cites *Riser* for this discovery
2 request. Neither *Riser* nor any other case or authority says
3 that the prosecution must perform an investigation for the
4 defendant. As stated above: (1) *Riser* does not support
5 defendant's position, (2) the Supreme Court in *Littlefield*,
6 among others, explains that the prosecution is not required to
7 "gather up everything which might eventually prove useful to the
8 defense," (*Littlefield*, 5 Cal.4th at 135) and (3) 1054.5
9 precludes the defense from inventing new discovery obligations.

10 **Defense Requested Item #3**

11 The People object to this request as outside our discovery
12 obligations, vague as phrased, and on exactly the same grounds
13 of Requested Item #2. The logistics of how one would attempt to
14 comply with this request are unknown to this attorney.

15 As stated above: (1) *Riser* does not support defendant's
16 position, (2) the Supreme Court in *Littlefield*, among others,
17 explains that the prosecution is not required to "gather up
18 everything which might eventually prove useful to the defense,"
19 (*Littlefield*, 5 Cal.4th at 135) and (3) 1054 does not require
20 prosecution to gather facts not within knowledge of prosecution
21 team and 1054.5 precludes the defense from inventing new
22 discovery obligations.

23 **Defense Requested Item #4**

24 The People assume that this request goes to non law
25 enforcement people only. The law applying to rap sheets and
26 dissemination thereof is governed by statute in California[PC
27 11076, 11081, 11105(b), 11141-11143]. Improper disclosure is a
28 misdemeanor[PC11141-11142]. Rap sheets have all kinds of

1 personal information on people that is totally outside of our
2 obligations under Brady. It is the People's intention to search
3 the records of non-law enforcement material witnesses and
4 disclose to the defense only the information that could pertain
5 to Brady, for instance dates and locales of arrests and
6 convictions.

7 If the court orders the People to run rap sheets of people
8 and turn them over to the defense, we will. However, the People
9 don't think it is appropriate in light of the above.

10 As stated above: (1) *Riser* does not support defendant's
11 position, (2) the Supreme Court in *Littlefield*, among others,
12 explains that the prosecution is not required to "gather up
13 everything which might eventually prove useful to the defense,"
14 (*Littlefield*, 5 Cal.4th at 135) and (3) 1054 does not require
15 prosecution to gather facts not within knowledge of prosecution
16 team and 1054.5 precludes the defense from inventing new
17 discovery obligations.

18 **Defense Requested Item #5**

19 The People intend to comply with our Brady obligation as to
20 any informants that apply to this case. Please see our response
21 to #7.

22 **Defense Requested Item #6**

23 The People incorporate by reference our response to Requested
24 item #4.

25 If the court orders the People to run rap sheets on all the
26 witnesses, and turn them over to the defense, we will.

27 **Defense Requested Item #7**

1 The People intend to comply with our *Brady* obligations as
2 to any informants that apply to this case. There are no
3 informants in regard to percipient witnesses in this case that
4 the People are claiming privileges on. Some of Detective
5 Cordova's gang sources of information are confidential, and he
6 will claim privileges regarding their identities.

7 **Defense Requested Item #8**

8 The People object to this request as vague and outside our
9 discovery obligations. If any law enforcement official or
10 employee chooses to personally organize their already discovered
11 materials in some way that is convenient for them, I don't think
12 this would fall under our discovery obligations.

13 **Defense requested Item #9**

14 The People object to this request as outside of our
15 discovery obligations. The People furthermore find no support in
16 *Riser*, *Izazaga*, or *Brady* for this request.

17 As stated above: (1) *Riser* does not support defendant's
18 position, (2) the Supreme Court in *Littlefield*, among others,
19 explains that the prosecution is not required to "gather up
20 everything which might eventually prove useful to the defense,"
21 (*Littlefield*, 5 Cal.4th at 135) and (3) 1054 does not require
22 prosecution to gather facts not within knowledge of prosecution
23 team and 1054.5 precludes the defense from inventing new
24 discovery obligations.

25 **Defense Requested Item # 10**

26 The People object to this request as outside our discovery
27 obligations, and this attorney finds no support for this request
28 in the *Riser* case, nor the *Izazaga* case.

1 As stated above: (1) *Riser* does not support defendant's
2 position, (2) the Supreme Court in *Littlefield*, among others,
3 explains that the prosecution is not required to "gather up
4 everything which might eventually prove useful to the defense,"
5 (*Littlefield*, 5 Cal.4th at 135) and (3) 1054 does not require
6 prosecution to gather facts not within knowledge of prosecution
7 team and 1054.5 precludes the defense from inventing new
8 discovery obligations.

9 **Defense Requested Item #11**

10 The People object to this request as outside our discovery
11 obligations. We have complied with it as to the Woodland Police
12 Department, as that is the agency where the assigned gang expert
13 works. It is irrelevant what other agencies, including the Yolo
14 County Sheriff's Department, has as far as policies for
15 classifying gang members. This defense in this case has been
16 notified that according to Detective Ron Cordova, the assigned
17 case gang expert, he has found no documentation at the Yolo
18 County Sheriff's Department validating Marco Topete specifically
19 as a gang member.


20 The People find no support in the *Riser* decision or the
21 *Izazaga* decision for this request. As stated above: (1) *Riser*
22 does not support defendant's position, (2) the Supreme Court in
23 *Littlefield*, among others, explains that the prosecution is not
24 required to "gather up everything which might eventually prove
25 useful to the defense," (*Littlefield*, 5 Cal.4th at 135) and (3)
26 1054 does not require prosecution to gather facts not within
27 knowledge of prosecution team and 1054.5 precludes the defense
28 from inventing new discovery obligations.

1 **Defense Requested Item #12**

2 The People object to this request as outside our discovery
3 obligations as far as the request goes to the Yolo County
4 Sheriff's Department.

5 I declare under penalty of perjury that the foregoing is
6 correct.

7 Executed on November 25, 2009, at Woodland, California.

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10 _____
11 GARRETT HAMILTON/173423
12 DEPUTY DISTRICT ATTORNEY
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SUPERIOR COURT NO. 08-3355

PROOF OF SERVICE

I, RACHEL HUNTER, declare that I am a resident of the County of Yolo; I am over the age of eighteen years and not a party to the within entitled action; my business address is 301 Second Street, Woodland, California 95695.

On November 20, 2009, I served the within PEOPLE'S OPPOSITION TO DEFENDANT'S NOTICED MOTION FOR PRETRIAL DISCOVERY COMPLIANCE on counsel for defendant in this action, by placing a true copy thereof enclosed in a sealed envelope and deposited the same at the Yolo County Mail Room for posting this business day, in the United States mail at Woodland, California, addressed to the counsel of record in this action, as follows:

THOMAS PURTELL
ATTORNEY AT LAW
430 3rd St
Woodland, CA 95695

HAYS GABLE III
ATTORNEY AT LAW
428 J St, Ste 354
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 20, 2009, at Woodland, California


RACHEL HUNTER